

Digest of A Performance Audit of the Utah State Tax Commission

We believe that in most instances the Tax Commission provides adequate due process to protect taxpayer rights by providing adequate notice and an opportunity to be heard. However, improvements are possible in the timeliness and consistency with which disputed tax assessments are resolved. Better defined organizational roles and procedures can help produce improvements, but management must comply with existing controls.

By its nature, the Tax Commission is one of the most controversial state agencies. Its mission is to collect revenue for state and local governments and to equitably administer tax laws. In requiring the public to pay taxes, the commission has a public trust to ensure that taxpayers are treated fairly. Individual taxpayers in tax disputes with the Tax Commission rely on due process to prevent the government from illegally taking their property. At the same time, Tax Commission processes need to protect the interests of other taxpayers by ensuring that everybody pays their fair share of taxes. The interests of governments that depend on tax revenue also must be protected.

The Tax Commission is an administrative agency, whose decisions are appealable to the judicial system. The Utah Constitution establishes a four-member Tax Commission to “administer and supervise” the tax laws of the state. Most of the 850-person organization which supports the four commissioners report to an executive director. The staff may determine how much taxpayers owe and take actions to compel payments. Staff actions are appealable to commissioners for an administrative ruling. The final decision of the Tax Commission is appealable to the state’s judicial system.

The Constitutional Revision Commission (CRC) is studying whether the constitutional status of the Tax Commission should be changed to better separate tax administration from tax adjudication. The proposed change would allow a Revenue Department to collect taxes independent of the Tax Commission which would adjudicate tax disputes. We believe the changes recommended in this report are needed whether or not the Legislature and the electorate decide to change the commission’s structure.

The specific findings of this report include:

Administration Plan Should Clearly Define Roles. Legislation passed in 1983 requires that the Tax Commission implement an administration plan which establishes the duties and responsibilities delegated to the executive director. However, the commissioners and the executive director did not agree to a plan until October 1994. This essential document

should have been prepared much earlier to better distinguish the adjudicative role of the commission from the administrative role of the executive director. As the plan is updated and clarified, we feel the following items should be considered. Tax commissioners need to make adjudication a higher priority and take control of the appeals process by: (1) devoting more time to appeals, (2) clearly defining participant roles, and (3) allocating additional resources to adjudication. On the administrative side, the following issues are important: (1) authority to forgive taxes needs continuing attention, (2) administration's involvement in appeals process needs clarification, and (3) relationship between auditing effort and mission needs clarification.

Tax Commission Needs to Better Define Administrative Appeals Process.

Currently, administrative appeals take too long to complete. As a result, the Tax Commission has a backlog of appeals that adversely affects county governments, taxpayers, and the state. The statutory requirement that centrally assessed appeals be decided within four months should be reconsidered since many appeals now take years to be resolved. The Tax Commission recognizes that a problem exists, and has proposed a plan to reduce the backlog and improve appeals processing time. While we support the commission's plan, further action is needed to prevent the problem from occurring again. Screening criteria are needed to identify all appeals with can be handled informally. In addition, better case-management procedures are needed, including: (1) a tracking system, (2) a scheduling system, and (2) case documentation standards. Finally, additional hearing procedures are needed to clarify the purpose of settlement conferences, to assist the commission in preparing for hearings, and to establish guidelines for when decisions will be issued after hearings.

Administrative Actions Should Follow Well-defined Internal Control Processes. To guard against some taxpayers receiving special treatment, the processes for assessing and collecting taxes must be well-defined and obeyed. In the past, important control processes have sometimes been bypassed at management discretion. However, an equally important factor in many questionable management actions has been the lack of clearly defined policy from the commission. We feel that the Administration Division should not adjust taxpayer accounts outside of normal processes, and that the Problem Resolution Group should be moved out of the Administration Division. In addition, the commission needs to clarify the appropriate method to change an audit assessment after it has been finalized. All taxpayer payments must be deposited and accounted for in the appropriate accounts and any promissory notes received should be promptly entered onto the accounts receivable system. Finally, procedures for making account adjustments should be revised to better control changes to taxpayer accounts.